

The Flinn Report

Illinois

Regulation

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Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

Proposed Regulations

✎ CORRECTIONAL FACILITIES

The DEPARTMENT OF CORRECTIONS adopted amendments to "Rights and Privileges" (20 Ill Adm Code 525; 30 Ill Reg 9389), effective 9/1/06, to include mail from and to the Illinois inspector general and state's attorneys under the category of incoming and outgoing "privileged" mail. An additional change requires notice to be sent to a publisher who mails a publication directly to an incarcerated person and also to the receiving offender to notify them that a review has been initiated to ascertain whether the publication is prohibited from acceptance at the facility. After receipt of the notice, the publisher has 21 days to object and submit supportive statements and documentation. Publications considered obscene or detrimental to security, good order, rehabilitation, or discipline or that might facilitate criminal activity or be detrimental to an offender's mental health are prohibited. Those affected by this rulemaking include publishers of prohibited materials.

Questions/requests for copies: Beth Kiel, DOC, 1301 Concordia Ct., Springfield IL 62794-9277, 217/522-2666, ext. 6511.

✎ HEALTH FACILITIES

The HEALTH FACILITIES PLANNING BOARD adopted amendments for "Health Facilities Planning Procedural Rules" (77 Ill Adm Code 1130; 29 Ill Reg 16173) and repealed the following 3 Parts, all effective 9/1/06: "Public Hearing and Comment Procedures" (77 Ill Adm Code 1140; 29 Ill Reg 16294); "Practice and Procedure in Administrative Hearings" (77 Ill Adm Code 1180; 29 Ill Reg 16304); and "Permit Application Fees" (77 Ill Adm Code 1190; 29 Ill Reg 16322). According to the Board, the repealed Parts are incorporated into Part 1130 and modified to reflect current industry standards and anticipated trends, implement recent statutory changes, and streamline HFPB's procedural rules. In Part 1130, definitions are added or updated, reporting and notification requirements are provided, and a new requirement that a "letter of intent" must be filed at least 60 days prior to submitting a permit application or a permit exemption application is added. The letter of intent marks the "impending" period for prohibition of ex parte communication concerning requests for exemptions or permits. Additional substantive changes include implementing a vary-

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✎ BACKGROUND CHECKS

The DEPARTMENT OF PUBLIC HEALTH proposed amendments for rules titled "Hospital Licensing Requirements" (77 Ill Adm Code 250; 30 Ill Reg 14758) to strike specific healthcare worker background check requirements that are duplicative of other DPH rules. Instead, DPH requires facilities to comply with the Health Care Worker Background Check Act [225 ILCS 46] and the Health Care Worker Background Check Code (77 Ill Adm Code 955). The Health Care Worker Background Check Code, like the requirements being stricken, requires health care employers to refrain from knowingly employing a person in a direct care position (e.g., aides, personal care assistants, day training personnel) if the person was convicted of committing, or attempting to commit, any offense specified in the statute and rules (e.g., murder, child pornography, criminal sexual assault). The Health Care Worker Background Check Code also includes the specific disqualifying offenses and waiver requirements. Those affected by this rulemaking include hospitals.

✎ NURSING HOMES

DPH also proposed amendments for the following 5 Parts: "Skilled Nursing and Intermediate Care Facilities Code" (77 Ill Adm Code 300; 30 Ill Reg 14780); "Sheltered Care Facilities Code" (77 Ill

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NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

New Regulations

ing fee structure dependent upon what type of application is submitted (\$2500 minimum to \$100,000 maximum); new documentation requirements concerning legal papers for ownership change, applicant qualifications, sufficient funds, ownership commitment, charity care policy, and timely project completion; and putting a 60-day deadline on Board action on applications for change of ownership exemptions between related persons. Applicants may now request technical assistance to comply with application requirements and must document that the project is in compliance with the "flood plain" rule and the Historic Resources Preservation Act during the completeness review. In addition, a new section clarifies terms and uses of different types of additional information provided during the review process, and time frames for analysis and review of Department of Public Health-requested or supplemental information are also clarified. The rulemaking authorizes the Board to issue permits with conditions, but limits the conditions to those that would not change the application in a way that would trigger a public hearing. Regarding changes to an already permitted project, the previous differences between what is allowed before and after project obligation are stricken, limitations on alterations are clarified, reduction in the scope of a project (i.e., decrease in square footage) is added to alterations that require HFPB approval, and certain alterations require a "supplemental permit". The regulations covering public hearing and comment procedures reflect significant statutory changes and clarify DPH's responsibility for the public hearings, establish a pre-hearing conference process, and allow discovery depositions only when the involved parties agree to do so. Changes since 1st Notice clarify and add definitions, reduce the time allowed to submit a letter of intent prior to submitting an exemption application from 90 to 60 days, and allow extensions of an obligation period for one year rather than 90 days. Also, the time period allowed an exemption holder to sub-

mit required documentation to the Board following project completion is lengthened from 30 to 60 days. Additional modifications restore the combination of 2 or more existing healthcare facilities into a single licensed facility in certain circumstances to the list of actions eligible for a permit exemption and restore the requirement that an exempted project for acquisition of major medical equipment must be competed within 24 months. Also, an incorporation by reference was added for a document published by the American Institute of Architects. Licensed hospitals, long-term care facilities, ambulatory surgical treatment centers, and end-stage renal dialysis centers are affected by these rulemakings.

Questions/requests for copies of the 4 HFPB rulemakings above: Susan Meister, HFPB, 525 W. Jefferson, 5th Fl., Springfield IL 62702, 217/782-2043, e-mail: rules@idph.state.il.us

PCB PROCEEDINGS

The POLLUTION CONTROL BOARD adopted amendments to "Organization, Public Information, and Types of Proceedings" (2 Ill Adm Code 2175; 30 Ill Reg 14990), effective 8/29/06, through the required rulemaking process. The amendments reflect provisions of 3 public acts: reducing the number of PCB members from 7 to 5 (PA 93-509), requiring that public bodies keep a verbatim record of all their closed meetings via audio or video recording (PA 93-523), and imposing website posting requirements on public bodies (PA 94-28). Among numerous changes, the rulemaking also updates: the manner in which meetings will be announced and conducted, the Board's office locations, its electronic docketing system for rulemakings and adjudicatory cases (COOL-Clerk's Office On-Line), descriptions of Board proceedings, information available on its website, cross-references to new procedural rules, and its organizational chart.

Requests for copies/comments: Dorothy Gunn, PCB, 100 W. Randolph, Ste.

11-500, Chicago IL 60601, 312/814-3620. Questions: Richard McGill at the same address, 312/814-6983. Please reference docket R04-9.

STATE EMPLOYEE SALARIES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES" adopted amendments for "Pay Plan" (80 Ill Adm Code 310; 30 Ill Reg 15059) by peremptory rulemaking, effective 9/5/06, to reflect a memorandum of understanding (MOU) between the State and the Municipal, Teamsters, Chauffeurs and Helpers Union, Local 726, signed 8/7/06. The MOU includes in the Teamsters Local 726 the seasonal, salaried, full-time highway maintainers whose primary function is snow removal in Cook County from October 16th through April 15th. The MOU assigns these highway maintainers to bargaining unit HR-001 and pay plan code Q. The pay rate is \$3,390 per month.

Questions/requests for copies: Jason Doggett, DCMS, 504 Stratton Bldg., Springfield IL 62706, 217/782-7964, Fax 217/524-4570.

MEDICAL CARE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted an emergency amendment to "Medical Assistance Programs" (89 Ill Adm Code 120; 30 Ill Reg 15029) and emergency rules titled "Veterans' Health Insurance Program" (89 Ill Adm Code 128; 30 Ill Reg 15044), both effective 9/1/06, for a maximum of 150 days. Identical proposed rulemakings for each are published in this issue of *Illinois Register*. The Part 120 amendment makes eligible for the Breast and Cervical Cancer Treatment Program any individual diagnosed with breast or cervical cancer or a precancerous cervical condition confirmed by an entity receiving a grant, sub-grant, or contract under the National Breast and Cervical Cancer Early Detection Program administered by the Department of Public Health. The new Part 128 rules offer uninsured veterans in Illinois access to health benefits.

New Regulations

Honorably discharged eligible veterans (19-64 years old who have been uninsured at least 6 months and with incomes of no more than 25% of the federal poverty level plus the Veterans Administration Geographic Means Test threshold) will pay \$40 monthly premiums and co-pays ranging from \$15 to \$150 for health benefits. Ambulatory procedures require a co-pay of 10% of the HFS rate. A monthly prescription benefit ranging from \$6-\$14 is also part of the program. Services covered are identical to those covered by the State Medical Assistance Program except for nonmedical transportation, certain over-the-counter drugs, and nursing facility services. Medical providers may be affected by

these rulemakings.

Questions/requests for copies/comments concerning both proposed rulemakings until 10/30/06: Tamara Tanzillo Hoffman, DHFS, 201 S. Grand Ave. E., 3rd Fl. Springfield IL 62763-0002, 217/557-7157.

RENEWABLE FUELS

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY adopted an emergency amendment to "Illinois Renewable Fuels Development Program" (32 Ill Adm Code 130; 30 Ill Reg 15025), effective 9/1/06, for a maximum of 150 days. An identical proposed rulemaking appears in this

issue of the *Illinois Register*. The amendment removes language from the rule that specifies the program is subject to an appropriation only from the Build Illinois Bond Fund. According to DCEO, this program will now be funded from the Renewable Resources Trust Fund. Entities involved in the development of renewable fuels may be affected by this amendment.

Questions/requests for copies/comments concerning the proposed rulemaking until 10/30/06: Jolene Clarke, DCEO, 620 E. Adams St., Springfield IL 62701, 217/557-1820, Fax 217/782-0038, e-mail: jolene.clarke@illinois.gov

Proposed Regulations

Adm Code 330; 30 Ill Reg 14795); "Illinois Veterans' Homes Code" (77 Ill Adm Code 340; 30 Ill Reg 14808); "Intermediate Care for the Developmentally Disabled Facilities Code" (77 Ill Adm Code 350; 30 Ill Reg 14817); and "Long-Term Care for Under Age 22 Facilities Code" (77 Ill Adm Code 390; 30 Ill Reg 14831). All of these amendments require facilities to make available family council information to all current and prospective residents, their families, and their representatives and to provide a meeting place if a council is established. (A family council may consist of residents' families and friends who live in the community.) Skilled nursing and immediate care facilities may be affected by these rulemakings.

Questions/requests for copies/comments concerning the 6 DPH rulemakings above until 10/30/06: Susan Meister, DPH at the address and telephone number listed above for HFPB.

NON-HAZARDOUS SOLID WASTE

The ENVIRONMENTAL PROTECTION AGENCY proposed amendments to "Procedures for Operation of the Non-Hazardous Solid Waste Fee System" (35 Ill Adm Code 858; 30 Ill Reg

14700) to make the Part applicable to the fees collected pursuant to Section 22.44 of the Environmental Protection Act [415 ICLS 5/22.44]. Under Section 22.44, fees collected from the owners or operators of sanitary landfills are deposited in the Subtitle D Management Fund to be used to administer the federal EPA's Subtitle D Program (solid waste regulation) under the federal Resource Recovery and Conservation Act (RCRA) as it relates to Illinois' municipal solid waste landfill program in order to fund a delegation of inspection, investigation, and enforcement functions within the City of Chicago or to fund an open dumping cleanup program. The rulemaking also deletes a reference to a fee found in statute and updates the Agency's Springfield address.

Questions/requests for copies/comments until 10/30/06: Stephanie Flow-ers, EPA, 1021 N. Grand Ave. E., Springfield IL 62794-9276, 217/782-5544.

INSURANCE

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION proposed amendments to "Registration of Insurers" (50 Ill Adm Code 852; 30 Ill Reg 14714). The rules repeal insurance holding company registra-

tion provisions and a form previously used in lieu of Illinois registration requirements by extraterritorial insurers who were not subject to state registration requirements. DFPR explains that as all states now have registration requirements in place, there is no longer a need for these particular registration provisions. A new form is added called Insurance Holding Company System Registration Statement-Initial, Annual or Amendment.

Questions/requests for copies/comments until 10/30/06: Barb Smith, DFPR, 320 W. Washington, 3rd Fl., Springfield IL 62767-0001, 217/785-0813 or Joseph T. Clennon, 320 W. Washington, 4th Fl., Spfld IL 62767-0001, 217/557-1396.

SPECIAL DEER SEASONS

The Department of Natural Resources proposed amendments to "Special White-Tailed Deer Season for Disease Control" (17 Ill Adm Code 675; 30 Ill Reg 14751). Ogle County is opened to Chronic Wasting Disease (CWD) hunts, and additional counties may be included at a later date by public announcement and/or publication. A drawing will be held at 5 a.m. at sites having a daily hunter quota if more people show up to hunt than can reasonably be accommodated. Un-

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filled firearm or muzzleloader permits originally issued for special hunt areas will not be valid during the CWD season unless the individual's name is redrawn in a daily site lottery to hunt the same special hunt area. CWD Season Deer Permits will be available over-the-counter for \$5, and all CWD permits are for antlerless deer only. This rulemaking also adds 2007 season dates and modifies penalty provisions to reflect that CWD permits may be purchased over the counter.

Questions/requests for copies/comments until 10/30/06: Jack Price, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

DOA determines that deficiencies exist, a Work Progress Form will be provided listing deficiencies to be addressed and corresponding time lines. A new section addresses the process for importing animals into Illinois, and imported animals must be accompanied by a health certificate outlining various vital statistics and stating that the animal is free of contagious, infectious, or communicable disease. A health certificate will not be required for fish; test/research animals; or animals brought specifically for performing, exhibition, or breeding purposes. Health certificates must be issued by an accredited veterinarian of the state or country of origin or a veterinarian in the employ of the federal Department of Agriculture (USDA). The rulemaking also outlines entry permit number requirements and conditions that may lead to refusal of an entry permit. The recordkeeping requirements will apply to all animals other than fish. Animals cannot be released or sold if the animal shows any signs of disease that influences the general health of the animal. Animal control facilities or animal shelters are obligated to accept any animal to be disposed of provided the licensee is equipped to accept that type of animal and has space for it. Also, numerous citations to federal

regulations are updated. Those affected by this rulemaking include equine shelter operators, animal importers, and dog daycare facility operators.

DOA also proposed amendments to "Diseased Animals" (8 Ill Adm Code 85; 30 Ill Reg 14681). The rulemaking updates and modifies the uniform standards for the Voluntary Bovine Johne's Disease Control Program from the U.S. Animal Health Association to state that test-eligible animals must be 24 months of age and older, specify the various types of tests allowed, and stipulate that only animal testing is recognized for herd testing and certification. Herds testing positive within the past 2 years will be restricted. Herds that stop testing but continue to have an annual risk assessment and herd plan completed by a certified Johne's disease veterinarian will not be restricted. Numerous citations to federal regulations are updated. Those affected by this rulemaking include herd owners.

Questions/requests for copies/comments concerning the 2 DOA rulemakings above until 10/30/06: Linda Rhodes, DOA, State Fairgrounds, Springfield IL 62794-9281, 217/785-5713, Fax 217/785-4505.

ANIMAL WELFARE

The Department of Agriculture proposed amendments to rules titled "Animal Welfare Act" (8 Ill Adm Code 25; 30 Ill Reg 14664). A new section outlines standards for dog daycare facilities, including vaccinations, common and play areas, group housing, and facilities. Numerous exceptions to building and premise regulations for equine shelters are added, but equine shelters must follow the guidelines established by the American Association of Equine Practitioners. When inspecting a licensee or applicant, if

Second Notices

No second notices were received by the Joint Committee on Administrative Rules during the period of September 5, 2006 through September 11, 2006. The next JCAR meeting is scheduled for October 10, 2006 in Chicago.